

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-08  
(August 15, 1996)

**Participation in Activities Relating  
To Judicial Reform Proposals**

**Issues**

1. May judges participate in campaigns for or against initiatives concerning judicial reform?

**Answer:** Yes, with qualifications.

2. May judges participate in campaigns for or against political candidates who take positions affecting the administration of justice?

**Answer:** No.

3. May judges appear at partisan political events to speak for or against proposals that affect the administration of justice?

**Answer:** Yes, with qualifications.

4. May judges speak for or against such proposals at community meetings or organizations?

**Answer:** Yes.

5. May judges assist in raising funds for an organization devoted to the improvement of the legal system?

**Answer:** Yes, with qualifications.

6. May judges contribute to initiative, candidate or media campaigns to support or oppose such proposals?

**Answer:** Yes.

7. Do the foregoing answers apply to the conduct of judicial staff?

**Answer:** Yes.

**Facts**

An Arizona ballot initiative addresses juvenile justice reform. Some judges who are opposed to the measure wish to participate in the public debate about its merits and in activities intended to defeat the initiative in the election.

## Discussion

### Issue 1

Canon 4 of the Code of Judicial Conduct generally allows judges to promote and improve “the law, the legal system or the administration of justice” by speaking, attending hearings on these subjects before an executive or legislative body, serving as members of organizations or governmental committees devoted to these purposes, and accepting invitations to activities devoted to these subjects. Canons 4B, 4C(1) through (3), and 4D(5)(a). The comments to Canon 4 “encourage” judges to do so because judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, “including revision of substantive and procedural law and improvement of criminal and juvenile justice.”

Any activities for or against voter initiatives, however, must not run afoul of Canon 5. Canon 5A(5) specifically provides that the only permitted “political activity” is activity “on behalf of measures to improve the law, the legal system or the administration of justice.” By implication, judges also may engage in political activity against measures that can be viewed as impairing the law, the legal system or the administration of justice. However, the activity may be limited by the nature of the forum in which it occurs. For example, appearing in a television commercial may be inappropriate. See Opinion 96-09.

### Issue 2

Judges may not participate in campaigns for or against political candidates, even those who take positions affecting the administration of justice. Canon 5A(1) of the Code of Judicial Conduct prohibits judges from publicly endorsing a candidate, making speeches for a political organization or candidate, fund-raising for a political organization or candidate, or actively taking part in any political campaign other than their own elections.

### Issue 3

While judges may not make speeches *for* political organizations, they may speak *to* political organizations or other groups on legal issues. Judges may speak “on behalf of measures to improve the law, the legal system, or the administration of justice.” Commentary to Canon 5A(1). *See* Canon 4B. By implication, judges may speak in opposition to measures harmful to the legal system. We regard a ballot initiative dealing directly with juvenile justice reform as the type of issue open to judicial comment rather than a merely political issue. *See* Opinion 76-01, issue 7.

The code defines “political organization” as a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. Because this definition is limited to organizations that promote candidates, an organization devoted only to a specific initiative relating to improvement of the justice system is not a “political organization” under the code. Judges therefore are able to both speak to and participate in such an organization. That part of our previous opinion applying the former version of the code and interpreting “political organization” more broadly than the current code definition, is hereby disapproved. *See* Opinion 78-02.

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Judges should, however, consider the nature of any event to ensure that no doubts about judicial impartiality will arise from participation. *See* Opinion 96-04 (judge cannot belong to National Lawyers' Guild, an organization dedicated to "the need for basic change in the structure of our political and economic system," because membership would raise question as to judge's impartiality). In addition, judges may attend political dinners and similar events, but their participation must be restricted so as not to constitute a public endorsement of a candidate or political organization. Canon 5A(1)(b).

In summary, judges may speak publicly about a voter initiative regarding improvement of the justice system.

### Issue 4

Judges may speak to community meetings or organizations on behalf of measures to improve the administration of justice. As noted above, the code allows judges to speak generally "concerning the law, the legal system, the administration of justice and non-legal subjects." Canon 4B. Nothing in the code prohibits judges from speaking to community groups in support of or in opposition to proposed initiatives to change the judicial system.

### Issue 5

Judicial support for fund-raising of any kind, in this case raising money for communications to the public on judicial reform proposals, is significantly circumscribed under the code. Judges may "assist" an organization devoted to the improvement of the legal system in raising funds, and may make recommendations to public and private fund-granting agencies on projects and programs concerning the legal system and the administration of justice. Canon 4C(3). "Assist" means to aid indirectly, such as by giving advice. Judges cannot, however, participate directly in public fund-raising activities devoted to the improvement of the legal system. Minnesota Opinion, April 7, 1989. If the organization is not "devoted to" improvement of the legal system, but is educational or civic, the judge's participation cannot involve any solicitation of funds. Canon 4C(4)(b). Judges also cannot be speakers or guests of honor at fund-raising activities for such organizations and cannot allow the prestige of their judicial offices to be used for that purpose. Canon 4C(4)(b).

In summary, judges can "assist" in fund-raising, but may not personally solicit contributions, for an organization devoted solely to an initiative relating to the improvement of the justice system. Judges cannot solicit funds for any other civic organizations, or speak at fund-raising events held by them.

### Issue 6

Judges can contribute funds to an organization formed to support or defeat ballot initiatives. The canons do not prohibit judges from making civic, as opposed to political, financial contributions. An organization devoted to defeating an initiative relating to the administration of justice, which does not support a particular candidate or party, is not a "politi-

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cal organization” based upon the definition discussed above. Therefore, judges may make contributions that are not subject to the \$250 limitation on contributions to political candidates or political organizations. *See* Canon 5A(1)(c).

### Issue 7

The Code of Judicial Conduct does not explicitly apply to judicial employees, but it does require judges to prohibit their staff from doing for judges what they cannot do for themselves under the various sections of the code. *See* Canon 5B(1)(b). The code also prohibits judges from authorizing or knowingly permitting any other person to assist them in a similar manner. *See* Canon 5B(1)(c).

In addition, the Arizona Supreme Court recently adopted a Code of Conduct for Judicial Employees that requires court staff to conduct their outside activities so as to avoid both a “negative effect on the court” and any “appearance of conflict.” *See* Ariz. Sup. Ct., Adm. Order 96-33, CCJE, Canons 4A and 4C. Although judicial employees generally may participate in political activities that do not give the impression that the judge endorses any political candidate or political cause (CCJE, Canon 5A), a judge’s personal staff and court managers are subject to the same limitations as the judge (CCJE, Canon 5B).

The judge’s immediate staff (law clerks, secretary or judicial assistant, bailiff) must be conscious of the judge’s ethical restrictions and ensure that their actions avoid the appearance of impropriety. Court staff cannot take actions that might be construed as being on behalf of the judge or the judge’s chambers, or that bring the judiciary into disrepute. Court employees who are not members of the judge’s immediate staff are not as restricted, because their actions are less likely to be associated with the judge. Nevertheless, the actions of any judicial employees must not impugn the integrity and independence of the judiciary.

### Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 4, 4B, 4C(1) through (3), 4C(4)(b), 4D(5)(a), 5, 5A(1), 5A(1)(b), 5A(5), 5A(1)(c) and 5B(1)(b) (1993).

Arizona Code of Conduct for Judicial Employees, Canons 4A, 4C, 5A and 5B (1996).

### Other References

Arizona Judicial Ethics Advisory Committee, Opinions [76-01](#) (Jan. 6, 1976); [78-02](#) (July 21, 1978); [96-04](#) (March 26, 1996); [96-09](#) (Aug. 15, 1996).

Arizona Supreme Court, Administrative Order 96-33, Code of Conduct for Judicial Employees, Canons 4A, 4C, 5A and 5B (July 22, 1996).

Minnesota Board of Judicial Standards, Opinion (April 7, 1989).